IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.299 OF 1994.

Rameshwar Ramkisan Kalantri
& ors. : Appellants.

versus

Ganjiram Yashwant Jadhav
& ors. : Respondents.

Mr.R.M.Haridas i/by P.N.Joshi for the appellants.
Ms.Manda Loke for S.S.Kulkarni for Respondent No.1.
Mr.S.S.Vidyarthi i/by Mr.S.M.Vidyarthi for Respondent No.5.

CORAM : D.G.DESHPANDE,J.

DATED : 18th January 2005.

ORAL ORDER.

1. Heard advocate for the appellants, advocate for respondent No.1 - the driver and the advocate for respondent No.5 - Oriental Insurance

Co.Ltd. The Appeal against Respondent No.2 is dismissed. Nobody is present for Respondent Nos. 3 and 4.

2. This appeal is filed by original claimant for enhancement. Appellant Nos. 1 and 2 are the parents and No.3 is the sister of the deceased Rajgopal who met with an accident on the night intervening between 16th September 1989 and 17th September 1989. At that time deceased Rajgopal was travelling in a fiat car No.MH-15-A/115 from Nashik to Nashik Road by Nashik Pune road. The car was being driven by Yogesh Ramratan Sarda. There were six occupants in the car, including the deceased Rajgopal. Yogesh was driving the car slowly, cautiously and by the left side of the road. When the car came near Saint Xeviour School, a Mini Bus No.MWN-3773 came from the opposite direction in a high speed and dashed against the car in an attempt to over take a rickshaw which was running ahead of the bus. In this accident Rajgopal received fatal injuries and he died instantaneously on the spot.

3. Deceased Rajgopal was 23 years of age at that time. He was running a business of PVC

pipes and electric motors and, therefore, in the circumstances his parents and sister filed the claim petition claiming Rs.5,00,000/- as compensation. The tribunal awarded Rs.91,000/- only. And, therefore, this appeal.

4. Firstly the counsel for Respondent No.1 - the driver of the mini bus contended that since the appeal against the owner of the mini bus O.C.Ribelo is dismissed by the Court either the appeal as its stand today is not maintainable or no claim can be awarded or considered against the driver - Respondent No.1.

5. Regarding enhancement of the compensation, my attention was drawn by the counsel for the appellants to para 10 of the judgment where Issue No.3 is discussed and decided by the tribunal. Para 10 is as under :-

> "10. Issue No.3 : On the point of quantum of compensation, Claimant Rameshwar has deposed that Rajgopal was running a shop of PVC pipes and electric motor etc. separately. For showing the income of Rajgopal, he filed Rajgopal's

> income tax assessment order for the year 1986-87 at Ex.30. In this assessment order Rs.20,030/- is shown as the net income liable for assessment. Likewise the claimant Rameshwar has also filed tax assessment order from the income tax department at Exh.38 in which total assessable income of Rajgopal is shown as Rs.29,670/-. This shows that his income was fluctuating in between Rs.20,000/- to Rs.29,000/- per year. So far the purpose of compensation, I think, it will be proper to assess his average income to Rs.26,000/- per year. Out of this Rs.13,000/- per year has to be deducted as his self expenses. so the net yearly dependency comes to Rs.13,000/-."

6. The counsel for the appellants, therefore, contended that when Rajgopal was doing a business and he was filing income tax returns and from the income tax returns it was clear that his income was increasing year by year, taking average income of Rs.26,000/- as the basis for calculation was wrong and Rs.29,000/- should have been taken by the Court for making calculation.

He pointed out that in the Assessment Order for the year 1986-87 Rs.20,030/- is shown as his income and in the Assessment order Exhibit 38 Rs.29,670/- is shown as his income. He contended that in a business income is always increasing and this was evident from two assessments order. Therefore, according to him, taking Rs.26,000/- as the basis was not proper. Secondly counsel for the appellants contended that when there were four members in the family i.e. three appellants and deceased Rajgopal, then deduction of Rs.13,000/- per year out of annual income of Rs.26,000/- i.e. deduction of 1/2 of the amount of Rs.26,000/- was totally wrong. This wrong calculation has resulted in reducing dependency to Rs.13,000/-. Thirdly, counsel for the appellants contended that the tribunal accepted multiplier of 7. Looking to the age of parents i.e. 56 is for the father and 51 is for the mother, application of wrong multiplier has also resulted in reducing the amount of compensation.

7. So far as first objection of the counsel for the Respondent No.1 is concerned, it is true that Respondent No.1 is the driver and the appeal against the owner is dismissed. But on that

count, the entire appeal is not required to be dismissed. Whether any liability is to be fixed against the driver - Respondent No.1 has to be seen after considering the other aspects.

8. Reduction of Rs.13,000/- from the annual income of Rs.26,000/- i.e. deduction of 1/2 amount towards expenses of the deceased Rajgopal is admittedly wrong and even the counsel for Respondent No.5 fairly conceded that deduction should have been 1/3rd for Rajgopal. Counsel for the appellants contended that if there are four members in the family, then deduction should have been 1/4. I find in the circumstances that whatever was the annual income, 1/4th amount is the proper amount to be deducted as the expenses spent by the Rajgoapl for himself.

9. So far as fixing his average income of Rs.26,000/- , the counsel for the appellants contended that when the income in the business was raising year by year and as per Exhibit 38 it was Rs.29670/-, then Rs.29,000/- should have been accepted as average income. The Court has taken income of Rs.20,000/- for 1986-87 on one side and Rs.29,000/- on other side and, has taken

Rs.26,000/- as mean. I do not find there is much difference or the Court has committed any serious mistake.

10. So far as applicability of multiplier is concerned, the tribunal has applied multiplier of 7. According to the counsel for respondent No.5, multiplier of 8 at the most could have been applied. He relied upon a judgment of the Supreme Court reported in **2004(1) T.A.C. 3 (S.C.) [Municipal Corporation of Greater Bombay v/s. Shri Laxman Iyer and anr.]** In that case a boy of 18 years died, the age of his parents was 47 and 43 respectively. The tribunal applied multiplier of 15 and it was confirmed by the High Court on higher side and, the Supreme Court held that it could never exceed 10.

. Therefore, the counsel for Respondent No.5 contended that if the parents' age in that case was 47 and 43 respectively and multiplier of 10 was applied by the Supreme Court, then in the instant case when the age of the parents of Rajgopal is 56 and 51 respectively, multiplier of 8 at the most should have been applied.

. As against this, the counsel for the appellants urged that the age of Rameshwar - the father at the time of his evidence was 55 years but the age of mother of the deceased was 48 years as per the evidence of PW.1 Rameshwar and not 51 years. He relied upon the judgment of the Supreme Court reported in **(2002) 6 SCC 52 [H.S.Ahammed Hussain v/s. Irfan Ahammed]** wherein the victims were 21 years and 22 years of age and, the age of their mothers was 40 years and 45 years respectively and, therefore, multiplier of 16 and 15 respectively was held to be proper.

11. It will be clear that two cases of Supreme Court have been cited before me regarding applicability of multiplier. In the case of Municipal Corporation of Greater Bombay, relied upon by the counsel for Respondent No.5, the deceased was 18 years of age at the time of his death and he was a student and had no earning at all. His income had to be calculated on the basis of prospective earning. The Supreme Court while considering the principle regarding applicability of multiplier referred to two judgment i.e. **Lata Wadhwa and ors. v. State of Bihar and ors. [AIR 2001 SC 3218 and;**

M.S.Grewal and Anr. v. Deep Chand Sood and ors. [AIR 2001 SC 3660] in para 12 observed as under:-

> "Keeping in view the observation made by this Court in various cases, several other factors need to be taken note of. The deceased was unmarried. The contribution to the parents who has their separate earnings being employed and educated have relevance. the possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or; the pecuniary benefits. The multiplier adopted by the Tribunal and confirmed by the High Court is certainly on higher side. Considering the age of the claimants it can never exceed 10 even by the most liberal standards."

This judgment is dated 27th October 2003.

. As against this, the counsel for the appellants relied upon the judgment of the Supreme Court in **(2002) 6 SCC 52.** This judgment

is dated 9th July 2002. In this case i.e. in the appeal before the Supreme Court, the respondent owned a lorry, and V and R, the sons of the appellants, were working as coollies therein. They were travelling in that lorry which met with an accident and both of them died. The age of R and that of his father and mother was 21 years, 45 ;years and 40 years respectively. The age of V and that of his father and mother was 22 years, 53 years and 45 years respectively. In that case the Supreme Court applied multiplier of 15 for V and multiplier of 16 for R.

12. Counsel for respondent No.5 contended that the judgment relied upon by him is the latest judgment and the judgment relied upon by the appellants is earlier, therefore, latest judgment should be followed.

13. In my opinion, distinguishing factor in the present case and the judgment relied upon by respondent No.5 is that in that case the boy was 18 years of age and was the student and was not earning anything, whereas in the case before me the boy was 23 years of age and he was earning

i.e. by doing business of PVC pipes and electric motors. In the judgment relied upon by the appellants, as referred to by me above i.e. (2002) 6 SCC 52, parents of R were 53 years and 45 years respectively. In the instant case parents of the victim before me are 55 years and 48 years respectively. Therefore, in my opinion multiplier of 13 would be proper.

14. As a result of aforesaid discussion, the appeal has to be allowed. Rs.26,000/- per annum is the income of the deceased Rajgopal. He would spend 1/4 of that amount for himself, therefore, Rs.6,500/- is required to be deducted as the amount that Rajgopal would spend for himself. Therefore, dependency comes to Rs.19,500/-. Multiplier of 13 is applied. Therefore calculation is Rs.19,500 X 13 = Rs.2,53,500/-.

15. Counsel for Respondent No.5 contended that under no circumstances and in no case the deduction for dependency and amount spent by the deceased for himself, can exceed 1/3rd of his annual income. He relied upon the judgment of

the Supreme Court reported in **2004 A.C.J. 448 [Asha and ors. v. United India Insurance Co. Ltd. and another] .** In para 8 the Supreme Court held and observed that there can be no doubt that the dependants would only be receiving the net amount less 1/3rd for his personal expenses. There is nothing in this case as argued by the counsel for the Respondent No.5 and the Supreme Court has not laid down that in each and every case amount for depenency can be 2/3rd only and amount to be deducted towards expenses of the deceased should be considered as 1/3rd. This judgment is of no help to Respondent No.5. Hence the order :-

:ORDER:

The appeal is partly allowed.

Since the appeal against Respondent No.2 is dismissed the appeal against respondent No.1 does not survive, but it survives as against the parties against whom the compensation is awarded by the tribunal and the appellants will be

entitled to receive Rs.2,53,500/- with interest at the rate of 9% p.a. from the date of the claim till actual payment and the proportionate costs of the appeal.

[D.G.DESHPANDE]

18/01/2005 JUDGE.